

RECORDATION No. 5806-18 Filed 1425

ASSIGNMENT AND ASSUMPTION AGREEMENT JUN 18 1979 - 1 00 PM

INTERSTATE COMMERCE COMMISSION

1. PARTIES

This Assignment and Assumption Agreement is made this fourth day of April, 1979, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Assignor), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly named Newrail Company, Inc. (Assignee).

2. FACTS

2.1 Assignor is a party to a lease of railroad equipment with Allis-Chalmers Leasing Corporation dated effective August 1, 1970, recorded with the Interstate Commerce Commission on August 20, 1970, Recordation No. 5806, which was supplemented by a First Supplement to Lease dated August 15, 1970, recorded with the Interstate Commerce Commission on October 12, 1970, Recordation No. 5806-A, further supplemented by an Agreement of Amendment to Lease between Darby Products Company and Allis-Chalmers dated November 1, 1970, recorded with the Interstate Commerce Commission on November 30, 1970, Recordation No. 5806-B. Allis-Chalmers assigned its interest to Allis-Chalmers Credit Corporation by an Assignment dated January 1, 1977, recorded with the Interstate Commerce Commission on

February 24, 1977, Recordation No. 5806-C. Allis-Chalmers Credit Corporation assigned its interest to Indianapolis Morris Plan by an assignment effective February 1, 1977, recorded with the Interstate Commerce Commission on February 24, 1977, Recordation No. 5806-D, as supplemented by a chattel mortgage between Indianapolis Morris Plan to National Bank of North America, effective February 1, 1977, recorded with the Interstate Commerce Commission on February 24, 1977, Recordation No. 5806-E, as supplemented by a collateral assignment of lease and agreement to National Bank of North America, effective February 1, 1977, recorded February 24, 1977, Recordation No. 5806-F, hereinafter collectively referred to as the "Agreement."

2.2 By a Purchase and Sale Agreement dated February 16, 1978, Assignor has agreed to sell substantially all of its assets, properties and rights of every kind and description, and business as a going concern to Assignee, and Assignee has agreed to assume, with certain exceptions, all of the duties, liabilities and obligations of Assignor.

2.3 Pursuant to the Agreement described in Paragraph 2.2, Assignor desires to assign its interest in the Agreement, and Assignee desires to assume the obligations of Assignor thereunder.

3. ASSIGNMENT AND ASSUMPTION

3.1 Assignment. Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, all of its right, title and interest under the Agreement.

3.2 Assumption. Assignee hereby assumes and agrees to perform, fulfill and discharge in accordance with the terms of the Agreement, at the sole cost of Assignee, each and all of the obligations, covenants, terms and conditions to be kept or performed by Assignor under the Agreement, including, but not limited to (if applicable), Basic Rent, all Supplemental Rent and Casualty Value. Assignee will, at its sole cost and expense, appear in and defend every action or proceeding arising under, growing out of, or in any way resulting from, the Agreement, or the duties, obligations or covenants of Assignor thereunder, and pay any and all amounts for which Assignor or Assignee may be held liable in respect thereof, including the payment of all reasonable attorneys' fees incurred by Assignor in any such action or proceeding.

4. APPOINTMENT OF ATTORNEY IN FACT

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney, irrevocably, with full power to ask for, and receive, any property, or refund monies

to which Assignor is entitled under the Agreement, or to enforce any and all other rights or privileges of Assignor under the Agreement.

5. MISCELLANEOUS

5.1 Assignee shall notify all other parties to the Agreement of this Assignment and Assumption Agreement, and shall cause this Assignment and Assumption Agreement to be recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof.

5.2 Any provision of this Assignment and Assumption Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Assignor hereby waives any provision of law

which renders any provision hereof prohibited or unenforceable in any respect.

ASSIGNOR:

THE WESTERN PACIFIC RAILROAD  
COMPANY, a California corporation

By *W. H. Humboldt, Jr.*  
Its Sr. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

ASSIGNEE:

THE WESTERN PACIFIC RAILROAD  
COMPANY, a Delaware corporation  
(formerly named Newrail Company,  
Inc.)

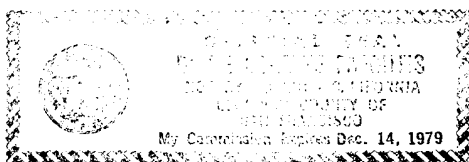
By *W. H. Humboldt, Jr.*  
Its Sr. Vice President - Finance

Attest *H. D. Brew*  
Its SECRETARY

STATE OF CALIFORNIA )  
 )  
 ) SS  
CITY AND COUNTY OF SAN FRANCISCO )

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

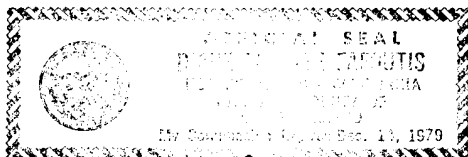


Diane Lorette Faboulis  
Notary Public in and for said State

STATE OF CALIFORNIA )  
 )  
 ) SS  
CITY AND COUNTY OF SAN FRANCISCO )

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Diane Lorette Faboulis  
Notary Public in and for said State

# THE WESTERN PACIFIC RAILROAD COMPANY

WESTERN PACIFIC BUILDING, 526 MISSION STREET  
SAN FRANCISCO, CALIFORNIA 94105  
TELEPHONE: (415) 982-2100

WALTER G. TREANOR  
VICE PRESIDENT-LAW

KATHERINE M. GRIFFIN  
GENERAL ATTORNEY  
EUGENE J. TOLER  
ATTORNEYS

RECORDATION NO. 5806-A Filed 1425

JUN 18 1979 - 1 32 PM  
INTERSTATE COMMERCE COMMISSION

June 15, 1979

File: 6116-47

## DELIVER

Honorable H. G. Homme, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

Dear Sir:

Enclosed for recording with the Interstate Commerce Commission are the original and two (2) certified true copies of an Assignment and Assumption Agreement dated April 4, 1979 between The Western Pacific Railroad Company, a California corporation, 526 Mission Street, San Francisco, California 94105 as Assignor and The Western Pacific Railroad Company, a Delaware corporation (formerly Newrail Company, Inc.) as Assignee, 526 Mission Street, San Francisco, California 94105 wherein the Assignor assigned and the Assignee assumed that certain Lease of Railroad Equipment dated as of August 1, 1970 between Allis-Chalmers Leasing Corporation, Box 512, Milwaukee, Wisconsin, as Lessor and Assignor as Lessee. The Lessor's interest in such lease was assigned to Indianapolis Morris Plan Corporation, 110 East Washington Street, Indianapolis, Indiana 40204. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Lease	August 20, 1970	5806
First Supplement Agreement of	October 12, 1970	5806-A
Amendment	November 30, 1970	5806-B
Assignment	February 24, 1977	5806-C
Assignment	February 24, 1977	5806-D
Chattel Mortgage	February 24, 1977	5806-E
Assignment	February 24, 1977	5806-F

The document relates to the following railroad equipment:

- 47 2220 cu.ft. 100-ton open top hopper cars, manufactured by The Darby Products of Steel Plate Corporation; AAR mechanical designation HK; Road Numbers WP 10001 - 10047, both inclusive.

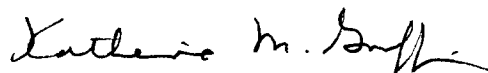
- 10 3000 H.P. Model GP-40 diesel electric locomotives manufactured by General Motors Corporation (Electro-Motive Division); AAR mechanical designation BB; Road Numbers WP 3517 - 3526, both inclusive.
- 15 65' 6" 100-ton drop end gondola cars, manufactured by The Maxson Corporation; AAR mechanical designation GB, Road Numbers WP 9051 - 9065, both inclusive.
- 100 50' 6" 70-ton insulated box cars manufactured by Pacific Car and Foundry Company; AAR mechanical designation XLI; Road Numbers WP 68226 - 68325, both inclusive.

Identifying marks: The words "Indianapolis Morris Plan Corp., Owner and Lessor and Ownership Subject to a Security Agreement filed with the Interstate Commerce Act, Section 20c" printed on each side of each unit.

Also enclosed is this Company's voucher in the sum of \$10.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return the original and counterpart with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425 - 13th Street, N.W., Suite 523, Washington D. C. 20004, who will be delivering this letter on our behalf.

Yours very truly,



Katherine M. Griffin

KMG:pra  
Attach.



Interstate Commerce Commission  
Washington, D.C. 20423

6/18/79

OFFICE OF THE SECRETARY

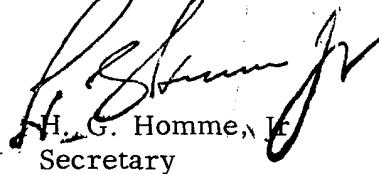
Katherine M. Griffin  
The Western Pacific RR Co.  
Western Pacific Building  
526 Mission Street  
San Francisco, Calif. 94105

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/18/79 at 1:30pm, and assigned recordation number(s). 5806-G

Sincerely yours,

  
H. G. Homme, Jr.  
Secretary

Enclosure(s)

SE-30  
(3/79)